

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

IN RE: SANTA FE NATURAL TOBACCO
COMPANY MARKETING & SALES
PRACTICES & PRODUCTS LIABILITY
LITIGATION

No. MD 16-2695 JB/LF

DEFENDANTS' STATUS REPORT AND REQUEST FOR HEARING

Barely one week ago, on October 26, 2018, the parties were before the Court for a status conference. The specific purpose was to amend the scheduling order after discussion of the issues that could impact the schedule. After a thorough discussion - - which included discussion of additional fact discovery Plaintiffs sought to take - - the parties agreed, and the Court ordered, that fact discovery would close October 31, 2018 (except Plaintiffs would have until November 15, 2018 to make named Plaintiff Albert Lopez available for deposition). Before ending the conference, the Court asked each party if they had other issues to raise. Plaintiffs' counsel said no (as did defense counsel). Plaintiffs' counsel never told the Court that Plaintiffs would leave the hearing and immediately prepare and serve additional and substantial written discovery requests on all Defendants. But that is what they did.¹

Plaintiffs' new written discovery is untimely and without justification. To be timely, Plaintiffs needed to serve their written discovery so that Defendants' responses would be due by

¹ See PLAINTIFFS' FIRST INTERROGATORIES TO R.J. REYNOLDS TOBACCO COMPANY, served October 29, 2018 and attached as Exhibit A; PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT R.J. REYNOLDS TOBACCO COMPANY, served October 29, 2018 and attached as Exhibit B; PLAINTIFFS' SECOND SET OF INTERROGATORIES TO REYNOLDS AMERICAN INC., served October 31, 2018 and attached as Exhibit C; PLAINTIFFS' SECOND SET OF INTERROGATORIES TO SANTA FE NATURAL TOBACCO COMPANY, served October 31, 2018 and attached as Exhibit D; and PLAINTIFFS' SECOND SET OF INTERROGATORIES TO R.J. REYNOLDS TOBACCO COMPANY, served October 31, 2018 and attached as Exhibit E.

the fact discovery cut-off date. By waiting until little more than 48 hours before the agreed-upon and Court-ordered termination date for fact discovery, Plaintiffs seek to grant themselves a 45-day extension of that deadline. [See ECF No. 37 at 6 (responses to written discovery due 45 days after service)].

Furthermore, the new written discovery is broad in scope and Defendants will need (and reasonably so) significant time to respond to it. And all but a few of Plaintiffs' individual discovery requests could have been served two years ago; the remainder could have been served more than a month ago, and when it would have been timely. Instead, Plaintiffs delayed until the last day of fact discovery, literally.

Even if this new discovery were timely- - which it is not - - Plaintiffs should have disclosed their plans to the Court and Defendants at last Friday's status conference so we all could have accounted for the additional written discovery in setting the amended schedule, if it were permitted at all. If Plaintiffs did not first plan this new discovery until after the status conference, then that speaks volumes about Plaintiffs need for and entitlement to it.

Defendants today have started a meet and confer process with Plaintiffs and will continue it. However, to avoid unnecessary delay, Defendants ask the Court to set a status conference. Counsel for Plaintiffs and Defendants are available on November 14, 15 or 16, 2018, if any of those dates are acceptable to the Court.

Dated: November 2, 2018

Respectfully submitted,

/s/ David M. Monde

David M. Monde (*pro hac vice*)
JONES DAY
1420 Peachtree Street, N.E., Suite 800
Atlanta, GA 30309
T: 404.521.3939
F: 404.581.8330
E: dmmonde@jonesday.com

Peter J. Biersteker (*pro hac vice*)
JONES DAY
51 Louisiana Ave., NW
Washington, D.C. 20001
T: 202.879.3939
F: 202.626.1700
E: pbiersteker@jonesday.com

Sharyl Reisman (*pro hac vice*)
JONES DAY
250 Vesey Street, Floor 34
New York, NY 10281
T: 212.326.3939
F: 212.755.7306
E: sareisman@jonesday.com

Andrew G. Schultz
RODEY, DICKASON, SLOAN, AKIN &
ROBB, P.A.
201 3rd Street NW, Suite 2200
Albuquerque, NM 87102
T: 505.768.7205
F: 505.768.7395
E: aschultz@rodey.com

Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 2, 2018, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Dated: November 2, 2018

Respectfully submitted,

/s/ Michael F. Stoer

Michael F. Stoer (*pro hac vice*)
JONES DAY
1420 Peachtree St., NE, Suite 800
Atlanta, GA 30309-3053
T: 404.581.8774
F: 404.581.8330
E: mstoer@jonesday.com

Counsel for Defendants